

SUMMARY ORDER

Gerald Mobley v. City of New York, et al., 09cv0211 (RRM)(MDG)

This order addresses the letter motion of Meghan Cavelieri, counsel for defendants, to stay this action (ct. doc. 24) because defendant Ronald Bronaugh, a detective, is currently on active military leave from the New York City Police Department. While defense counsel is correct that the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. Appx. § 521(d)(2006) protects against entry of default judgment against Detective Bronaugh, this Court is not persuaded by counsel's argument that prejudice will result to the defendant City of New York if discovery proceeds before counsel is able to communicate with this defendant. While counsel is correct that Detective Bronaugh "may have information central to the issues in this case," that is not, in itself, a reason to stay all discovery in this case. Counsel has already appeared on behalf of all the other individual officers sued, as well as the City of New York, and presumably interviewed the other individual defendants before filing an answer on their behalf. Counsel also states that she will be speaking with Detective Bronaugh after he returns from military duty. Thus, there is no indication that the detective would have a different defense from the other defendants or that the Office of the Corporation Counsel will not be representing this defendant, too.

The one case that defendants cite in support of their argument that the entire case should be stayed involved only one individual officer who apparently was not properly served. Franklin v. Balestrieri, 2002 U.S. Dist. Lexis 458 (S.D.N.Y. Jan. 14, 2002). The concern in that case was prejudice to the individual officer. That can be readily addressed by staying discovery as to the defendant on active duty.

As plaintiff notes, the action was commenced in January 2009. Although this court set a discovery deadline of October 30, 2009 at the initial conference held on April 27, 2009, there

has been little discovery other than disclosure of some documents. This Court sees no reason to delay discovery further in this case as to the other defendants, who are more than capable of protecting their own interests.

Thus, the motion to stay the entire action is denied, but discovery is stayed as to Detective Bronaugh. The length of the stay and extension of Detective Bronaugh's time to answer and scheduling order shall be discussed at the next court conference which is scheduled for November 2, 2009 at 2:00 p.m. The parties may appear by telephone, but are responsible for making arrangements for a conference call.

SO ORDERED.

Dated: Brooklyn, New York
October 30, 2009

/s/
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE